

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SHENZHEN ROOT TECHNOLOGY CO

LTD et al,

Plaintiffs,

v.

CHIARO TECHNOLOGY LTD,

Defendant.

CASE NO. C23-0631-KKE

STIPULATED PROTECTIVE ORDER

Plaintiffs and Counterclaim-Defendants Shenzhen Root Technology Co., Ltd. (aka Shenzhen Lutejiacheng Network Technology Co., Ltd.<sup>1</sup>), Hong Kong Lute Technology Co., Limited, and Shenzhen Conglin Ecommerce Co. Ltd., Defendant and Counterclaim-Plaintiff Chiaro Technology Ltd., and Counterclaim-Defendants Shenzhen Jinruihang Technology Co., Ltd., and Shenzhen Lutejiacheng Network Technology Co., Ltd. (individually, a “party” and collectively, the “parties”) jointly stipulate and agree to the entry of a protective order as described below.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby

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<sup>1</sup> On or around September 22, 2023, Shenzhen LuteJiacheng Network Technology Co., Ltd., changed its name to Shenzhen Lute Innovation Technology Co., Ltd.

1 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
2 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
3 protection on all disclosures or responses to discovery, the protection it affords from public  
4 disclosure and use extends only to the limited information or items that are entitled to confidential  
5 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
6 confidential information under seal. The availability of protection pursuant to this Protective Order  
7 does not preclude a party from withholding information protected by any applicable privilege.  
8 Nothing in this Protective Order shall restrict in any way the right of a producing party to disclose  
9 or make use of its own documents or discovery material. Under LCR 26(c)(2), the parties began  
10 with the District's Model Protective Order, and have identified departures from the model in a  
redlined copy, attached as Exhibit B.

11 2. "CONFIDENTIAL" MATERIAL

12 "Confidential" material shall include documents and tangible things produced or otherwise  
13 exchanged that (1) the designating party reasonably believes contain, describe, or disclose  
14 sensitive, non-public, confidential information, such as (a) court records, whether in this District  
15 or other courts, currently maintained under seal; (b) information subject to a non-disclosure or  
16 confidentiality agreement; (c) employee personnel information; (d) a non-party's commercially  
17 sensitive information, trade secrets, or competitive or strategic initiatives that are not readily  
18 ascertainable and for which the designating party has taken reasonable steps to maintain  
19 confidentiality, and (e) personal identifying information subject to redaction under Local Rule 5.2;  
20 or (2) the designating party's own commercially sensitive information, such as (a) financial or  
21 accounting information; (b) commercially sensitive internal communications or information; (c)  
non-public research and development information, including product development documents; and  
(d) business negotiations, transactions, and dealings with non-parties.

22 3. SCOPE

23 The protections conferred by this agreement cover not only confidential material (as  
24 defined above), but also (1) any information copied or extracted from confidential material; (2) all

1 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
2 conversations, or presentations by parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover information that is in  
4 the public domain or becomes part of the public domain through trial or otherwise.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
7 or produced by another party or by a non-party in connection with this case only for prosecuting,  
8 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
9 categories of persons and under the conditions described in this agreement. Confidential material  
10 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
11 that access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
13 by the court or permitted in writing by the designating party, a receiving party may disclose any  
14 confidential material only to:

15 (a) the receiving party’s counsel of record in this action, as well as employees  
16 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) Up to three (3) officers, directors, and employees (including in-house  
18 counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, and  
19 no more than five (5) individuals cumulatively per side, to be agreed with the designating party in  
20 advance, such disclosure following receipt by the designating party of the individual’s signed  
21 “Acknowledgement and Agreement to Be Bound” in the form set out at Exhibit A, unless a  
22 particular document or material produced is for Attorney’s Eyes Only (“AEO”) and is so  
23 designated (a particular document or material is considered AEO if it contains extremely sensitive  
24 “CONFIDENTIAL” information or items, disclosure of which to another party or nonparty would  
create a substantial risk of serious harm; AEO documents cannot be reviewed by officers, directors,  
or employees of the receiving party);

(c) experts and consultants to whom disclosure is reasonably necessary for this

1 litigation, provided that: (1) such experts or consultants are not presently employed by or serving  
2 as an independent contractor, vendor, or consultant for the parties hereto for purposes other than  
3 this action; (2) before access is given, the consultant or expert has signed, completed, and agreed  
4 to the "Acknowledgment and Agreement to Be Bound" (Exhibit A) attached hereto and the same  
5 is served upon the producing party with a current curriculum vitae of the consultant or expert. If  
6 the producing party does not object within five business days, the party may give access to the  
7 disclosed consultant or expert. If the producing party timely objects to disclosure of confidential  
8 material to the consultant or expert, the parties shall promptly confer and use good faith to resolve  
9 any such objection. If the parties are unable to resolve any objection, the objecting party may file  
10 a motion with the court within ten (10) days of its objection, or within such other time as the parties  
11 may agree, seeking a protective order with respect to the proposed disclosure. The objecting party  
12 shall have the burden of proving the need for a protective order. No disclosure shall occur until all  
13 such objections are resolved by agreement or court order. Notwithstanding the above, no discovery  
14 shall be had of any expert or consultant disclosed under the provisions of this paragraph unless  
15 and until such person is designated as a testifying expert witness under Fed. R. Civ. P. 26(a)(2);;

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication of  
18 confidential material, provided that counsel for the party retaining the copy or imaging service  
19 instructs the service not to disclose any confidential material to third parties and to immediately  
20 return all originals and copies of any confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is  
22 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
under this agreement;

(g) the author or recipient of a document containing the information or a

1 custodian or other person who otherwise possessed or knew the information.

2 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
3 referencing such material in court filings, the filing party shall confer with the designating party,  
4 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
5 remove the confidential designation, whether the document can be redacted, or whether a motion  
6 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
7 designating party must identify the basis for sealing the specific confidential information at issue,  
8 and the filing party shall include this basis in its motion to seal, along with any objection to sealing  
9 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and  
10 the standards that will be applied when a party seeks permission from the court to file material  
11 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
12 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
13 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
14 the strong presumption of public access to the Court's files.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
17 or non-party that designates information or items for protection under this agreement must take  
18 care to limit any such designation to specific material that qualifies under the appropriate  
19 standards. The designating party must designate for protection only those parts of material,  
20 documents, items, or oral or written communications that qualify, so that other portions of the  
21 material, documents, items, or communications for which protection is not warranted are not swept  
22 unjustifiably within the ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
24 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for

1 protection do not qualify for protection, the designating party must promptly notify all other parties  
2 that it is withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
4 agreement (*see, e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or  
5 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
6 be clearly so designated before or when the material is disclosed or produced.

7 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
8 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
9 the designating party must affix the word “CONFIDENTIAL” to each page that contains  
10 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
11 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
12 markings in the margins).

13 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
14 and any participating non-parties must identify on the record, during the deposition or other pretrial  
15 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
16 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
17 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
18 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
19 at trial, the issue should be addressed during the pre-trial conference.

20 (c) Other tangible items: the producing party must affix in a prominent place  
21 on the exterior of the container or containers in which the information or item is stored the word  
22 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
23 the producing party, to the extent practicable, shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
designate qualified information or items does not, standing alone, waive the designating party’s  
right to secure protection under this agreement for such material. Upon timely correction of a  
designation, the receiving party must make reasonable efforts to ensure that the material is treated

1 in accordance with the provisions of this agreement.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
4 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
5 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
6 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
7 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
8 original designation is disclosed.

9 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
10 regarding confidential designations without court involvement. Any motion regarding confidential  
11 designations or for a protective order must include a certification, in the motion or in a declaration  
12 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
13 affected parties in an effort to resolve the dispute without court action. The certification must list  
14 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
15 to-face meeting or a telephone conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
17 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
18 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
19 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
20 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
21 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
22 the material in question as confidential until the court rules on the challenge.

23 7. PROSECUTION BAR

24 Absent written consent from the designating party, any individual who receives access to  
"Attorney's Eyes Only" (AEO) information shall not be involved in the prosecution of patents or  
patent applications relating to breast pump technology, including without limitation the patents  
asserted in this action and any patent or application claiming priority to or otherwise related to the

patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, ex parte reexamination or inter partes reexamination). This prosecution bar shall begin when access to “Attorney’s Eyes Only” (AEO) information is first received by the affected individual and shall end two (2) years after final termination of this action.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement,



1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A.

3 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently  
6 produced material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
8 is not intended to modify whatever procedure may be established in an e-discovery order or  
9 agreement that provides for production without prior privilege review. The parties agree to the  
entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10 11. NON TERMINATION AND RETURN OF DOCUMENTS

11 Within 60 days after the termination of this action, including all appeals, each receiving  
12 party must return all confidential material to the producing party, including all copies, extracts and  
13 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
15 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
product, even if such materials contain confidential material.

17 The confidentiality obligations imposed by this agreement shall remain in effect until a  
18 designating party agrees otherwise in writing or a court orders otherwise.

19 PURSUANT TO STIPULATION, IT IS SO ORDERED

20 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
21 documents, electronically stored information (ESI) or information, whether inadvertent or  
22 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or  
23 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
24 documents, including the attorney-client privilege, attorney work-product protection, or any other  
privilege or protection recognized by law. This Order shall be interpreted to provide the maximum

1 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.  
2 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review  
3 of documents, ESI or information (including metadata) for relevance, responsiveness and/or  
4 segregation of privileged and/or protected information before production. Information produced  
5 in discovery that is protected as privileged or work product shall be immediately returned to the  
6 producing party.

7 Dated this 14th day of December, 2023.

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Kimberly K. Evanson  
United States District Judge  
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